

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1 ✓
	)	
Low-Volume Long Distance Users	)	CC Docket No. 99-249
	)	
Federal-State Joint Board On Universal Service	)	CC Docket No. 96-45
	)	

**COMMENTS OF CABLE & WIRELESS USA, INC.**

**I. Introduction**

Cable & Wireless USA, Inc. ("C&W USA"), by its attorneys, hereby submits the following Comments in response to the Commission's Notice of Proposed Rulemaking ("Notice") in the proceeding captioned above.<sup>1</sup> In this proceeding, the Commission is considering an interstate universal service and access reform plan submitted by the Coalition for Affordable Local and Long Distance Services ("CALLS"). C&W USA is a preeminent provider of data, Internet, and long distance services, with ongoing plans to integrate and upgrade its networks in order to provide a full range of integrated, basic, and advanced telecommunications services packages to consumers. As such, C&W USA has a direct and vital interest in the outcome of this proceeding.

While C&W USA would prefer that the FCC order immediate reductions in access charges to cost-based rates, C&W USA will support the CALLS proposal as an improvement

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<sup>1</sup> *Notice of Proposed Rulemaking*, FCC 99-235, rel. Sept. 15, 1999 ("Notice").

over the status quo. However, C&W USA urges the Commission to modify the plan by 1) establishing plans and triggers for additional and immediate rate reductions, 2) eliminating the \$650 million "access universal service fund," and 3) applying the CALLS plan to all price cap ILECs, as discussed below.

**II. In the Absence of Better Alternatives That the Commission Is Willing to Implement, C&W USA Supports Adoption of the CALLS Proposal With Certain Modifications.**

If adopted as proposed, the CALLS plan would radically change the Commission's current access charge, universal service support, and price cap regimes. The current system of common line charges would be combined into a single SLC that would be geographically deaveraged under certain conditions. A new universal service fund, intended to replace support "currently implicit in interstate access charges,"<sup>2</sup> would be created. Switched access charges would be reduced annually until target levels are reached and then rates would be frozen until July 2004. As proposed by CALLS, the plan would be implemented over a five-year period beginning in January 2000 and would apply only to those price cap ILECs that agree to participate.

Today interstate switched access charges are still in excess of cost, despite the Commission's best efforts to promote rate reductions through the development of competition in the local services market. C&W USA has previously recommended that the Commission address this problem by requiring price cap ILECs to reduce access charges to the state PUC derived costs for functionally equivalent unbundled network elements.<sup>3</sup> We continue to believe that this is the best possible solution to the problem of above-cost access charges. However,

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<sup>2</sup> Notice at ¶ 2.

<sup>3</sup> See Comments of C&W USA in *Access Charge Reform and Pricing Flexibility*, CC Docket No. 96-262, filed Oct. 26, 1998.

should the Commission not accept C&W USA's proposal and in the absence of other alternatives, C&W USA supports adoption of the CALLS plan.

The changes in rate levels and rate structure proposed by CALLS would bring access charges much closer to cost and would result in the recovery of a greater portion of the total cost of access through end-user charges. These changes would work to the ultimate benefit of U.S. consumers. Reductions in access charges can be expected to force further reductions in long distance rates, as competition in the long distance market at present effectively requires carriers to flow cost reductions down to the end user. The changes in rate structure and rate levels will also promote more effective competition in the telecommunications industry. The Commission has previously recognized that long distance access and UNEs provide the same functionality, and that charging different rates for effectively the same service discourages carriers from investing in telecommunications services and facilities in an economically efficient manner.<sup>4</sup> As access charge rates approach cost, there will be smaller differences in the rates charged by ILECs for long distance access and for UNEs. Thus, reductions in access charges and changes to the rate structure as proposed by CALLS will promote overall efficiency in the telecommunications industry. At the same time, however, C&W USA has serious concerns about certain aspects of the CALLS proposal, and strongly urges the Commission to modify the plan before adopting any or all of it.<sup>5</sup>

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<sup>4</sup> See *Access Charge Reform, First Report and Order*, 12 FCC Rcd 15982, 16129 (1997); *Access Charge Reform, Notice of Proposed Rulemaking*, 11 FCC Rcd 21354, 21360-21361 (1996).

<sup>5</sup> The Commission should not (and indeed, cannot) agree to CALLS' request to "take or leave" the proposal in its entirety. Compliance with such a request would be inconsistent with the fundamental nature of this proceeding, *i.e.*, a rulemaking. The Communications Act requires that any action taken by the Commission in adopting rules and policies serve the public interest, regardless of the particular interests of those parties who may have proposed various rules and policies to the Commission. Thus, if the Commission finds that certain parts of the CALLS proposal do not serve the public interest (as C&W USA  
(continued...))

**A. The Commission Must View the CALLS Proposal As a Significant Step, But Not the Last Step, to Reduce Access Charges to Cost.**

First, access charge reform cannot end with implementation of the CALLS proposal. State commission-approved interconnection rates demonstrate that the ILECs' forward-looking cost of providing transport and termination for local calls – a function identical to access – is below one-half of one cent (\$.005) per minute.<sup>6</sup> As such, reductions in access charges to the levels suggested by CALLS -- \$.0055 per minute for RBOCs and GTE, and \$.0065 per minute for all other price cap ILECs – will still leave access charges above cost. At a minimum, the Commission should establish at the outset a firm schedule for reducing access charges to cost, as measured by the rates determined by each state commission for equivalent UNEs in the ILECs' service territories.

In addition, the Commission should require that access charge rates be *immediately* reduced to cost upon the occurrence of certain triggering events. In particular, the FCC should require any price cap ILEC that is granted Phase I pricing flexibility for switched access services to reduce its rates to cost in the relevant metropolitan statistical area ("MSA") upon grant of regulatory relief. Grant of Phase I pricing flexibility for switched access services will give an ILEC the right to cut volume and term discounts for these service offerings. ILECs that have been given such regulatory relief should not be allowed to subsidize the deals they cut for certain customers with above-cost revenues received from other IXC's who are not eligible for special deals.

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(...continued)

asserts in these Comments), then the FCC is bound by the Act to reject those components or modify them prior to adoption.

<sup>6</sup> See Reply Comments of the Competitive Telecommunications Assn. in *Access Charge Reform and Pricing Flexibility*, CC Docket No. 96-262, filed Nov. 9, 1998, at 7.

**B. The Commission Should Reject CALLS' Proposed \$650 Million Increase in Universal Service Funding.**

Second, C&W USA strenuously objects to the proposed \$650 million "access universal service fund." There is no valid basis for this part of the CALLS proposal. The Commission is currently considering, in the context of its universal service proceedings, how much funding is required to support universal service, and what kind of mechanisms are needed to collect and disburse these funds. Since the Commission in this context will determine the total support needed for universal service and will establish the means to obtain and distribute that support, there is no need for a separate fund as CALLS suggests.

Under these circumstances, the only purpose for the "access universal service fund" is to make access reform revenue neutral for the price cap ILECs. It is not lawful for the Commission to adopt requirements whose sole purpose is to preserve a revenue stream for a regulated carrier.<sup>7</sup> More importantly, establishment of such a fund would not serve the public interest, as it would impose unnecessary costs on consumers. Furthermore, it would distort competition, as it would facilitate the efforts of price cap ILECs to cross-subsidize affiliated companies that operate in competitive markets. Should the Commission decide to implement an "access universal service fund" as proposed by CALLS, then C&W USA agrees that these funds should be assessed directly on end users. There is no basis for imposing on IXC's the burdens of serving as the price cap ILECs' billing agents.

**C. The Commission Should Require Mandatory Participation of All Price Cap ILECs.**

Finally, C&W USA recommends that the Commission require *all* price cap ILECs to comply with the CALLS plan, and not just those ILECs that have volunteered to participate as

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<sup>7</sup> *E.g., Competitive Telecommunications Assn. v. FCC*, 87 F.3d 522, 530 (D.C. Cir. 1996).

suggested by CALLS. There is no valid basis, economic or otherwise, for drawing distinctions among the price cap ILECs. Furthermore, the establishment, implementation, and administration of yet another access charge regime would be burdensome for the Commission, and would divert scarce resources from other, more important proceedings.

Operation under a third access charge scheme would be problematic for IXC's as well. If the CALLS proposal is mandated for some but not all price cap ILECs, per-minute access charge rates will vary substantially among ILECs and between different parts of the country. Such variations would make it harder for IXC's to charge postalized rates for their service offerings. It could also discourage IXC's from offering the lowest possible rates to consumers. The requirement imposed on IXC's in Section 254(g) of the Act to charge the same rates nationwide may lead IXC's to price their long distance services on the basis of the highest access cost (to ensure adequate cost recovery). Thus, failure to require all price cap ILECs to comply with the CALLS plan may mean that consumers will not realize the full benefits of the access charge reductions that are mandated by the proposal.

### **III. Conclusion**

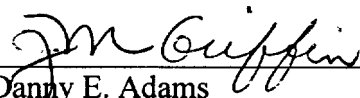
In light of these facts, C&W USA recommends that the Commission immediately order the price cap ILECs to reduce access charges to cost. Should the Commission be unwilling to take such action, the FCC should adopt the CALLS proposal with the modifications noted herein.

Respectfully Submitted,

**CABLE & WIRELESS USA, INC.**

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